SUPREME COURT OF THE UNITED STATES.

No. 402.

JOHN BENNETT, PLAINTIFF IN ERROR,

vs.

THE STATE OF IOWA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

INDEX.

	Original.	Print.
Indictment	2	1
Indictment, date of filing	2	1
Order for bench warrant	3	1
Plea of not guilty	3	2
Motion and affidavit for continuance	4	2
Notice to introduce witnesses	6	3
Service of notice	6	3
Jury impaneled and verdict	7	4
Motion for new trial and ruling	8	4
Bill of exceptions	8	4
United States license	9	5
Refusal to admit license	9	5
Instructions to jury	9	5
Motion for new trial	10	6
Judgment	11	6
Appeal bond	12	7
Notice of appeal to clerk	13	7
Notice of appeal to district attorney	14	8
Clerk's certificate	15	8
Judgment of supreme court	16	8
Certificate of clerk of supreme court	19	9
Writ of error	20	10
Certificate of chief justice	22	10
Certificate of clerk of supreme court	24	11
Citation	25	11

1 Pleas and proceedings before the district court of Polk county, Iowa, begun and held on the 8th day of January, A. D. 1866, the Hon. Charles C. Nourse, judge of the 5th judicial district, presiding.

THE STATE OF IOWA
vs.
JOHN BENNETT.

2 Be it remembered that heretofore, to wit, on the 27th day of July, A. D. 1865, there was filed in the office of clerk of the district court in and for Polk county and State of Iowa, an indictment in words and figures following, to wit:

Indictment for keeping a nuisance.

THE STATE OF IOWA
against
JOHN BENNETT.

The grand jury of the county of Polk, in the State of Iowa, being legally impanelled in the name and by the authority of the State of Iowa, accuse John Bennett of the crime of keeping a nuisance, committed as follows:

The said John Bennett, on the 1st day of May, A. D. 1865, at the county of Polk aforesaid, and in the city of Des Moines, in said county, and on every day from that time until the finding of this indictment, did wilfully and unlawfully establish, continue, and use a building and place for the purpose and with the intent of unlawfully owning, keeping, and selling intoxicating liquors, contrary to law, to the great nuisance of all the good people of said county of Polk, contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the State of Iowa.

H. W. MAXWELL,
District Attorney of the 5th Judicial District, Iowa.

The within indictment was presented to the district court of Polk county, Iowa, in open court by the foreman of the grand jury,
3 in the presence of all the grand jurors, and filed by the clerk of said court on this 27th day of July, 1865.

H. H. GRIFFITHS,
Clerk of the District Court of Polk County, Iowa.

I hereby order a bench warrant to issue forthwith on the within indictment for the arrest of said defendant, and his bail is fixed at three hundred dollars.

WM. LOUGHRIDGE, *Judge.*

And afterwards, to wit, on the 1st day of August, 1865, there was filed in the office of said clerk a plea of not guilty, with reservations, in words and figures following, to wit:

STATE OF IOWA }
vs.
JOHN BENNETT. }

Now comes the defendant and pleads not guilty, expressly, however, saving and reserving the right to withdraw this plea and attack the indictment herein by demurrer or motion to set aside, if upon examination the same shall be denied, defective, and open to objection.

PHILLIPS, FINCH & ELWOOD.

STATE OF IOWA }
vs.
JOHN BENNETT. }

STATE OF IOWA, *Polk County, ss:*

I, John Bennett, of said county, being duly sworn, do depose and say that I am the defendant in the above-entitled action; that I, as defendant herein, am indicted for a nuisance under the 8th section of the act of the general assembly of the State of Iowa, entitled "An act for the suppression of intemperance," which took effect July 1st, 1855; that the indictment against me herein was found at the present term of this court, and that I am arrested and arraigned on a bench warrant some four or five days since, and a day or two after the indictment was filed.

And I do further depose and say, that I was not in custody or on bail, nor had I deposited money instead of bail when this indictment was found against me, nor had I prior to the present term been arrested and held to bail for the same offence.

And I do further depose and say, that the actions, criminal, ordinary, and equitable, triable at the present July term of this court were duly arranged upon the calendar or docket prepared by the clerk of this court, as provided and required by section 3,005 of the revision of 1860 in the order therein specified.

That the court at this time proceeded to try and dispose of the said causes so arranged in their order and tried, continued, and disposed of all the criminal cases on said docket, as required by section 3,006, with the exception of two or three cases, which by consent and direction of the court were set down for trial at a subsequent day in the term; that after the court had so disposed of the causes set down on the said calendar and tried and disposed of several jury causes and recovered several verdicts and entered judgment thereon.

And I do further depose and say, that I have, as I verily believe, a good and substantial defence to this action on the merits; that I have testimony material to my successful defence on the trial hereof which I have not been and am not now able to procure at this time of this court; that acting upon the statements and advice of my counsel herein that this cause could not be tried at this term of this court unless I desired a trial thereof, I have made no preparations for this trial, and am utterly unprepared to try this cause at this time of this

court, but desire a continuance of the same; and I hereby offer good and ample security for my appearance to answer to the indictment herein at the next term of this court, at which time I expect to be prepared for trial hereof.

Therefore, for the reasons appearing in this affidavit, I respectfully ask for a continuance of this action until the next term of this court, relying on the facts above stated and the provisions of sections 3,005, 3,006, 4,723, and 4,725.

JOHN BENNETT.

Subscribed and sworn to by John Bennett before me, this 8th day of August, 1865.

[SEAL.]

A. MORRIS,
Notary Public, Polk County, Iowa.

And afterwards, to wit, on the 8th day of January, A. D. 1866, there was filed in the office of said clerk a notice to introduce witnesses, in words and figures following, to wit:

6 *Notice to introduce witnesses.*

STATE OF IOWA }
vs. }
JOHN BENNETT. }

The defendant, John Bennett, is hereby notified that on the trial of the above-entitled cause the plaintiff, the State of Iowa, will introduce in support of the indictment the following-named witnesses, to wit:

1st. Samuel Noel; residence, Des Moines, Polk county, Iowa; occupation, city marshal.

2d. Townsend Hall; residence, Des Moines, Polk county, Iowa; occupation, laborer.

3d. David Barnard; residence, Des Moines, Polk county, Iowa; occupation, merchant.

4. W. A. Hunt; residence, Des Moines, Polk county, Iowa; occupation, constable.

All of whom are expected to testify that the defendant, John Bennett, in Des Moines, in said county, on the 1st day of May, 1865, and thereafter until the 27th day of July, 1865, did establish, continue, and use a building for the purpose of unlawfully selling intoxicating liquors therein contrary to the law within the time above mentioned.

Received the within notice on the 4th day of January, 1866, and on the same day I served the same on the within-named defendant, John Bennett, by reading the within notice to him and delivering him a true copy of the same at Des Moines, Iowa.

NATHAN McCALLA,
Sheriff, Polk County, Iowa.
By J. BAUSMAN, *D'p'ty.*

7 And afterwards, to wit, on the 12th day of January, 1866, the same being the 5th day of the January term of said court, the following proceedings were had.

H. W. MAXWELL,
District Attorney of the 5th Judicial District, Iowa.

STATE OF IOWA
vs.
JOHN BENNETT. } 163 crim.

Now, on this day, this cause came on for hearing, the plaintiff appearing by the Hon. H. W. Maxwell, district attorney, and the defendant by his attorneys, Phillips & Phillips, and then came a jury of twelve good and lawful men, to wit: B. C. McDaniel, David Hayer, J. S. Wheaton, James Yonk, Geo. Robinson, M. A. Sheppard, Simon Bennett, F. Fuller, J. D. Davis, George Bogenwright, A. C. Holmes, G. W. Barngrower, who being duly sworn to well and truly try the issues in this cause, and after hearing the evidence, the argument of counsel, and the instructions of the court, retired, in charge of a sworn bailiff, to consider of their verdict, and, after a time spent in deliberation, returned into court with the following verdict, to wit: "We, the jury, find the defendant guilty as charged in the indictment," when said jury was discharged.

And afterwards, to wit, on the 15th day of January, 1866, the same being the 7th day of the January term of said court, the following proceedings were had, to wit:

8 STATE OF IOWA
vs.
JOHN BENNETT. } 163 crim.

Now comes Phillips & Phillips, attorneys for defendants, and files a motion in arrest of judgment and for a new trial, which is overruled by the court, to which the defendant excepted, and files bills of exception, duly settled and signed by the court.

And afterwards, to wit, on the same day, there was filed in the office of said clerk a bill of exceptions in the words and figures following, to wit:

In the district court of Polk county, Iowa, January term, 1866.

STATE OF IOWA
vs.
JOHN BENNETT.

Be it remembered, that in this cause the State claimed that the nuisance charged was the result of keeping a place for the sale of intoxicating liquors in the city of Des Moines, Polk county, Iowa, and that it was pretended by the State that the defendant sold liquors, or kept the same for sale, at any other place in the said county of Polk than in the city of Des Moines.

That after the State had rested its case, the defendant offered to read as evidence to the jury a license from the United States to the defendant as a retail liquor dealer, in the words and figures following, to wit:

No. 159.—*United States internal revenue license.*

In force from May, 1865, until May 1st, 1866.

9 To all whom it may concern:

This license is granted to John Bennett, of the city of Des Moines, in the county of Polk, and State of Iowa, to carry on the business or occupation of retail liquor dealer at No. , street, in the aforementioned place, he having paid the tax of twenty-five dollars therefor, conformably to the provisions of the excise law or the laws of the United States.

This license to be in force until the 1st day of May, 1866, provided the holder shall conform to the requirements of said laws, and of such other law or laws as are now, or may be hereafter, *be* in this behalf enacted.

Given under my hand and seal, at Des Moines, this 11th day of September, 1865.

[SEAL.] S. HAINES,

Collector of the 5th Judicial District, State of Iowa.

A. BOWERS, *Dep't.*

And further offered to show a full compliance with the laws of the United States, touching the said license, but that the court refused to permit the defendant to give the same in evidence on the trial; the defendant then and there excepted; that the court then, upon its own motion, gave to the jury the following instructions, in the words and figures following, to wit:

Nuisance.

THE STATE OF IOWA }
vs. }
JOHN BENNETT. }

Defendant is charged with establishing and keeping a place for the sale of intoxicating liquors contrary to law.

The indictment charges that the act was done on the 1st
10 day of May, 1865, and you will inquire whether the defendant did so keep intoxicating liquors for sale at the place named, within the time aforesaid, contrary to law; it is sufficient to charge the defendant, unless such evidence is rebutted. The defendant is presumed to be innocent, and his guilt must be proved beyond a reasonable doubt, otherwise you will acquit defendant.

C. C. NOURSE, *Judge.*

That the foregoing is all the instructions given to the jury, and that to the giving of each and every of the said instructions the defendant excepted at the time.

And be it further remembered, that after the jury returned their verdict into court, and before judgment thereon, the defendant filed his motion in arrest of judgment and for new trial, in the words and figures following, to wit:

THE STATE OF IOWA
vs.
JOHN BENNETT.

In the district court of Polk county, Iowa, January term, 1866.

Comes now the defendant and moves the court in arrest of judgment, and for a new trial, in this cause, upon the following grounds, to wit:

I. The verdict of the jury is against and contrary to law, and is not sustained by the evidence.

II. The court erred in refusing to permit defendant to give evidence to the jury offered by him on the trial.

III. The court erred in giving the instructions to the jury given upon its own motion.

IV. The law ander which said indictment is found, and
11 upon which it is based, is unconstitutional, and is in conflict with the constitution of the State of Iowa, and is void.

PHILLIPS & PHILLIPS,
Attorneys for Defendant.

That the court overruled said motion, to which ruling of the court and overruling of said motion the defendant then and there excepted, and asks that this, his bill of exceptions, be made to appear of record herein, and it is so ordered by the court.

CHARLES C. NOURSE, *Judge.*

And afterwards, to wit, on the 18th day of January, A. D. 1866, the same being the 10th day of the January term of said court, the following proceedings were had:

STATE OF IOWA
vs. 163 crim.
JOHN BENNETT.

Now, on this day, this cause came on to be heard, and for final sentence, and the court having inspected the verdict of the jury herein and all the pleadings, and the defendant being personally present in open court, the court doth find that the defendant, John Bennett, is guilty as charged in the indictment, and doth sentence him to pay a fine of three hundred dollars ($300 00) and the costs of this suit, and to stand committed to the jail of this county until the same is paid.

It is therefore ordered and adjudged by the court that the plaintiff
have and recover of the defendant, John Bennett, the sum of
12 three hundred dollars and the costs of this suit, taxed at twenty-one 60-100 dollars, and that execution issue therefor.

Signed by C. C. Nourse, judge, at the end of the day's proceedings.

And afterwards, to wit, on the 19th day of January, 1866, an appeal bond was filed in the office of said clerk, in words and figures following, to wit:

Whereas at the July term of the district court of Polk county, Iowa, an indictment was found against John Bennett, accusing the said John Bennett of keeping a nuisance, in the city of Des Moines, Iowa;

And whereas, at the January term of the said district court, 1866, the said John Bennett was found guilty, as charged in the indictment, and on the 18th day of January, A. D. 1866, a judgment was entered against him, and he was fined in the sum of three hundred dollars, and stand committed to the jail of the county until the same was paid;

And whereas John Bennett has appealed from the judgment and decision of said district court to the supreme court of Iowa:

Now we, John Bennett, of Des Moines, by occupation a saloon-keeper, and G. Munzenmaier, residence Des Moines, Iowa, occupation a saloon-keeper, undertake that the said John Bennett shall appear in the supreme court, and prosecute this appeal to judgment, and abide the order and judgment of said supreme court.

Now, if the said John Bennett shall comply with the condi-
13 tions of this bond, and pay the fine now adjudged against him, or such part of it as the supreme court may direct, and in all respects abide the order and judgment of the supreme court on the appeal; or if he fail to perform either of these conditions, that we will pay the State of Iowa the sum of six hundred dollars.

Signed this 18th day of January, 1866.

JOHN BENNETT.
G. MUNZENMAIRER.

And afterwards, to wit, on the 11th day of May, A. D. 1866, there was filed in the office of said clerk a notice of appeal in the words and figures following, to wit:

In the district court of Polk county, Iowa.

STATE OF IOWA }
vs. }
JOHN BENNETT. }

To the clerk of the district court of Polk county, Iowa:

You are hereby notified that the defendant in the above-entitled cause has appealed from the judgment rendered against him in the district court of Polk county, Iowa, to the supreme court of the State of Iowa.

You will, therefore, certify to the clerk of said supreme court, on or before the next term thereof, to be held in June, a full and complete copy of the whole record in the case.

FINCH, CLARK & RICE,
Attorneys for Def't.

Service accepted May 11th, 1866.

H. H. GRIFFITHS.

And afterwards, to wit, on the 19th day of May, 1866, there was filed in the office of the said clerk a notice of appeal to defend-
14 ant, in words and figures following, to wit:

STATE OF IOWA
vs.
JOHN BENNETT.

To the district attorney of the 5th judicial district:

You are hereby notified that the defendant in the above-entitled cause has appealed from the judgment rendered against him at the trial of said cause, in the district court of Polk county, to the supreme court of the State of Iowa, and that the same will be for hearing at the next session thereof.

FINCH, CLARK & RICE,
Attorneys for Defendants.

I accept service of this notice and waive a copy, this 17th day of May, 1866.

H. W. MAXWELL,
District Attorney of the 5th Judicial District.

15 STATE OF IOWA, *Polk County:*

I, H. H. Griffiths, clerk of the district court of said county, do hereby certify that the above and foregoing is a true, full, and complete transcript of the cause wherein the State of Iowa was plaintiff, and John Bennett was defendant, as full, true, and complete as the same now appears of record in my office.

Witness my hand and the seal of said court, this 22d day of May, 1866.

[L. S.] H. H. GRIFFITHS, *Clerk.*

[U. S. rev., 5 cts.]

District court costs	$41 60
Two transcripts	11 00
Two certificates	1 10
	53 70

16 Be it remembered, that at a supreme court of the State of Iowa, begun and held at the city of Des Moines on Thursday, the 14th day of June, A. D. 1866—

Present: Hon. Ralph P. Lowe, chief justice; Hon. Jno. F. Dillon, Hon. C. C. Cole, Hon. Geo. G. Wright, judges—

The following was entered of record, to wit:

THE STATE OF IOWA
against
JOHN BENNETT, app'l't. } 2,487. Appeal from Polk co.

This cause, coming on for hearing, was submitted to the consideration of the court.

And afterwards, to wit, on the 16th day of June, 1866, the following was entered of record, to wit:

THE STATE OF IOWA
against
JOHN BENNETT, app'l't. } 2,487. Appeal from Polk co.

This cause having been submitted to the consideration of the court, and the court being now sufficiently advised in the premises, find that there is no error in the judgment and proceedings
17 of the court below, and file their written opinion.

It is, therefore, considered by the court that the judgment of the court below be affirmed, and that the appellee, the State of Iowa, have and recover of and from the appellant, John Bennett, the sum of three hundred dollars as a fine, together with the costs of the court below taxed $, and the costs of this court taxed at $, and that he stand committed to the jail of Polk county until said fine and costs are fully paid; and a certified copy of this judgment shall be furnished the sheriff of Polk county by the clerk of this court, which shall be his sufficient warrant to arrest and commit the said John Bennett to the jail of Polk county, and to stand so committed in accordance with this judgment; and the said John Bennett, being three times called to respond to this judgment, comes not, but makes default:

It is, therefore, ordered and adjudged that default be entered in favor of the State of Iowa, and against the said appellant, and the undertaking of G. Munzenmaier, the bail in this case, is forfeited.

18 And afterwards, to wit, on the 21st day of June, 1866, the following was entered of record, to wit:

THE STATE OF IOWA
against
JOHN BENNETT, appl't. } 2,487. Appeal from Polk county.

In this case it is ordered that in case an appeal is taken to the U. S. Supreme Court, that the bail be $600, to be approved by the clerk of this court.

19 SUPREME COURT, *State of Iowa:*

I, Lewis Kinsey, clerk of the supreme court, do hereby certify that the foregoing pages, from 16 to 18, inclusive, contains all the journal entries in said cause in the supreme court of Iowa, as full, true, and complete as the same appears of record in said court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Des Moines, this 16th day of November, A. D. 1866.

[L. S.] LEWIS KINSEY, *Clerk.*

5-c. in. rev. stamp, cancelled.

20 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the supreme court of the State of Iowa, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said supreme court of the State of Iowa, before you, between the State of Iowa and John Bennett, manifest error hath happened to the great damage of the said John Bennett, as by his complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday in December next, in said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and ac-
21 cording to the law and custom of the United States should be done.

Witness the honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this fourth day of December, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the United States the 89th.

[L. S.] W. G. WOODWARD,
Clerk of the United States Circuit Court for the District of Iowa.

[50-ct. int. rev. stamp, cancelled.]

The within writ of error allowed, this 25th day of June, 1866.

R. P. LOWE,
Chief Justice of the Supreme Court of the State of Iowa.

Filed June 25, '66.

L. KINSEY, *Cl'k.*

22 Supreme court of the State of Iowa.

THE STATE OF IOWA
vs.
JOHN BENNETT.

I, the undersigned, chief justice of the supreme court of the State of Iowa, do hereby certify that in the above-entitled cause, and upon the hearing and decision thereof in this court, there was drawn in question the validity of the statute of the State of Iowa, entitled "An act for the suppression of intemperance," passed by the general assembly of said State, and which took effect July 1, 1855, and especially the validity of the 8th section of said act, on the ground that said act, and especially the 8th section thereof, were repugnant to and in conflict with the Constitution and laws of the United States,

and that the decision of the court was in favor of the validity of said statute and of the 8th section thereof.

And I do further certify that in the above-entitled cause, and on the hearing and decision thereof in this court, there was drawn in question the validity of the right, privilege, and authority of the defendant, John Bennett, to keep intoxicating liquors, either imported or domestic, with intent to sell the same under a license granted to him by the government of the United States, pursuant to and in compliance with the provisions of the act of Congress, entitled "An act to provide internal revenue to support the government and to pay interest on the public debt," approved July 1, 1862, and the acts amendatory thereof; and that the decision of this court was against the validity of such right, privilege, or authority under such
23 license.

And I further certify that the said supreme court of the State of Iowa have ordered this certificate to be made a part of this record in the above-entitled cause.

In witness whereof I have hereunto set my hand and caused the seal of the supreme court of the said State to be affixed, at Des Moines, in said State, this 26th day of June, A. D. 1866.

[L. S.] R. P. LOWE,

Chief Justice of the Supreme Court of the State of Iowa.

Filed June 26th, 1866.

L. KINSEY, *Cl'k.*

24 STATE OF IOWA, *Supreme Court:*

I, Lewis Kinsey, clerk of the supreme court of the State of Iowa, do hereby certify that the foregoing pages contain a full, true, and complete copy of the transcript in the cause entitled the State of Iowa *vs.* John Bennett, filed in the supreme court of Iowa, as full, true, and complete as the original now remains on file in said court. I further certify that I have attached hereunto the original writ of error in said cause, directed to the judges of the supreme court of Iowa, and also the certificate of the chief justice of said court.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Des Moines, this 27th day of October, A. D. 1866.

[SEAL.] LEWIS KINSEY, *Cl'k.*

[5c. int. rev. st'p, cancelled.]

25 United States of America to the State of Iowa, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, in the District of Columbia, on the first monday in December next, pursuent to a writ of error filed in the office of the clerk of the supreme court of the State of Iowa, wherein John Bennett is plaintiff, and you are defendant in error, to show cause, if any there be, why judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable Ralph P. Lowe, chief justice of the supreme court of the State of Iowa, this 26th day of October, in the year of our Lord 1866.

R. P. LOWE,
Chief Justice of the Supreme Court of the State of Iowa.

26 STATE OF IOWA, *Polk County:*

I, J. M. Walker, being duly sworn, depose and say that I am United States marshal of the district of Iowa, that the within citation came into my hands on the 27th day of October, 1866, and that I served the same on the State of Iowa, by reading the same to W. M. Stone, governor of the State of Iowa, and delivering to him a true copy of the same, at Knoxville, Iowa, on the 29th day of the same month, and by reading the same, and delivering a true copy of the same, to F. E. Bissell, att'y gen'l of said State, at Dubuque, in said State of Iowa, on the 1st day of November, 1866, and at the respective times of service did exhibit the original hereof to governor and att'y gen'l.

[SEAL.] J. M. WALKER,
U. S. Marshal Dist. of Iowa.

Subscribed and sworn to by J. M. Walker, before me, on this 1st day of November, 1866.

JOHN D. RICE,
Notary Public, Polk Co., Iowa.

Marshal's fees:

Mileage	$18 42
Service	4 00
	22 42

O

Supreme Court of the United States.

December Term, A. D., 1866. No. 396.

Also, Nos. 397, 398, 399, 400, 401, and 402: all depending on the same questions, and may be regarded as one case.

HUGH CARNEY

vs.

THE UNITED STATES.

Brief for the Plaintiffs in Error.

These cases come from the supreme court of Iowa. The plaintiff was indicted for keeping a place with the intent to sell intoxicating liquors in it, &c. For his defense he relied on a license from the United States, to sell such liquors in the *locus*. The court excluded this as evidence, and convicted and sentenced the plaintiff, and now he asks that the judgment may be reversed for that alleged error.

It may be that the solemn judgments of this Court, upon similar cases and questions, may be regarded as conclusive of these cases. It is not my purpose to ask for a rehearing on arguments already considered, but to suggest other views, if permitted, and which it is submitted will enable the judicial mind to reach other conclusions.

In McGuire *vs.* Massachusetts, 3 Wal., 388, the Court directly intimates the unquestioned law: that in the absence of preventing State legislation, the license from the United States, would be absolute. Upon this I remark:

First. That, so much of the act of July, 1862, as is thus made to depend on State legislation for force and effect, thereby loses all character of law, and becomes non-absolute, unequal, and not uniform throughout the United States.

That it is a law, or not, independent of the will of its enactors, but waiting upon a contingency; which is absurd.

That being enacted by the sovereign it should be holden absolute.

SECOND. The sixty-seventh section of the law of 1862 is void, because—

It makes the validity of a license depend upon a contingency not arising in any law of Congress, or act of any department of the national Government.

It attempts to confer power upon a foreign State to defeat and nullify other provisions of the same act.

It attempts to delegate a portion of the legislative power of Congress to the States, which cannot be done. Because, legislative power cannot be delegated. Because, Congress can neither delegate, or create and confer power, upon the States; nor can it legislate upon the States, as such, for any purpose.

THIRD. And repeating in part in another form—

The legislation of Congress upon the subject excludes State legislation from it, unless Congress can divide its legislative power with the States, which it cannot.

The States, in contemplation of law, are older than the Constitution, and all are presumed to have been present at its formation; and all the power they may exercise, is the residue of their original powers, not given up in the fabrication of that instrument. They derive none from it, or from the legislation of Congress.

The power to legislate by the States as contemplated by the sixty-seventh section referred to, is not among the powers reserved to the States, for it is conceded to be among those conferred upon Congress; and as it could not be redelegated, it cannot be exercised by the States.

Such an exercise of power is in conflict with section 2, article 4, for the right to trade, so far as it can depend on the Constitution and laws of the United States, is a privilege and immunity guarantied by that section, which are denied by the legislation of Iowa.

FOURTH. The plaintiff in the court below, contended with great force, that as between the United States and himself, the license was a contract, and inviolable. I invite the consideration of the Court to this view.

I also ask that the argument for the plaintiff in No. 377, Pervear *vs.* Massachusetts, just submitted, may be kept in mind, in the disposition of these cases.

Respectfully submitted.

A. G. RIDDLE.

DECEMBER TERM, 1866.

Nos. 396 to 402 Inclusive.

HUGH CARNEY,

Plaintiff in Error

vs.

THE STATE OF IOWA,

AND OTHER CASES.

BRIEF FOR DEFENDANT IN ERROR

D. N. COOLEY,

Counsel for State of Iowa

WASHINGTON:
PRINTED BY LEMUEL TOWERS.
1867.

UNITED STATES SUPREME COURT.

DECEMBER TERM, 1866.

HUGH CARNEY, Plaintiff in Error, *vs.* THE STATE OF IOWA.	No. 396.
G. MUNZENMAINER, Plaintiff in Error, *vs.* THE STATE OF IOWA.	No. 397.
ADAM BACHMAN, Plaintiff in Error, *vs.* THE STATE OF IOWA.	No. 398.
CHARLES BAHLOR, Plaintiff in Error, *vs.* THE STATE OF IOWA.	No. 399.
JOHN NEWMAN, Plaintiff in Error, *vs.* THE STATE OF IOWA.	No. 400.
LOUIS STUTZ, Plaintiff in Error, *vs.* THE STATE OF IOWA.	No. 401.
JOHN BENNETT, Plaintiff in Error, *vs.* THE STATE OF IOWA.	No. 402.

Brief for Defendant in Error.

These cases are in this court by writ of error to the Supreme Court of the State of Iowa, and are precisely similar in the questions presented for the consideration of this court. I therefore ask the court to consider them together, and to treat this one brief as applicable to each and all of said cases.

But two questions are presented for determination by this court, as certified by the Chief Justice of the Supreme Court of Iowa.

First. Is the 8th section of the Statute of Iowa, entitled "An act for the Suppression of Intemperance," passed by the